

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-369-C - ORDER NO. 2004-550
NOVEMBER 8, 2004

IN RE: Joint Application of Lightyear)	ORDER GRANTING
Communications, Inc. Lightyear)	APPROVAL OF ASSET
Telecommunications, LLC and Lightyear)	TRANSFER,
Network Solutions, LLC for Approval of an)	CERTIFICATE, AND
Asset Transfer and for a Certificate of Public)	MODIFIED AND
Convenience and Necessity for Lightyear)	FLEXIBLE
Network Solutions, LLC to Provide Resold)	REGULATION
and Facilities-Based Local Exchange and)	
Interexchange Telecommunications Services)	
and for Modified Alternative Regulation of its)	
Interexchange Services and Flexible)	
Regulation of its Local Exchange Services.)	

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Lightyear Communications, Inc., Lightyear Telecommunications, LLC, and Lightyear Network Solutions, LLC (the Applicants) for approval to transfer the assets of Lightyear Communications and Lightyear Telecommunications to Lightyear Network Solutions (New Lightyear or the Company). In addition Lightyear Network Solutions requests authority to provide resold and facilities-based local exchange and interexchange telecommunications service. Also, Lightyear Network Solutions requests approval of Flexible Regulation for its Local Exchange Service and Modified Alternative Regulation for its Interexchange Telecommunications Services. (Lightyear Network Solutions requests that the Commission regulate its local telecommunications services in accordance with the

principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, that Company requests that the Commission regulate its business service offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.) The Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2003) and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed the Applicants to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Applicants complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

Counsel for SCTC filed with the Commission a Stipulation in which the Lightyear Network Solutions, LLC stipulated that it would not seek authority in rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Lightyear Network Solutions provided written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. That Company also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Lightyear Network Solutions agreed to abide by all State and Federal laws and to participate to the extent that it may be

required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Lightyear Network Solutions provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on March 18, 2004, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Mignon Clyburn, Chairman, presided. The Applicants were represented by Faye A. Flowers, Esquire. John J. Greive, Vice-President of Regulatory Affairs and General Counsel of Lightyear Holdings, Inc. appeared and testified on behalf of the Applicants. Jocelyn Boyd, Staff Counsel, represented the Commission Staff.

Mr. Greive presented testimony to describe and support the Application for Commission approval of the assignment of assets and related transactions. Greive noted that Lightyear Communications, Inc. provides facilities-based and resold telecommunications services on a retail basis throughout the United States, except Alaska. In South Carolina, Lightyear is authorized to provide facilities-based interexchange and local exchange telecommunications services pursuant to Order No. 94-659, issued on July 13, 1994. Lightyear Telecommunications, LLC is licensed to provide resold telecommunications services on a retail basis in about 38 states. This Company, however does not currently operate as a telecommunications carrier in any jurisdiction. In South Carolina, however, this Company is authorized to provide resold

telecommunications services as an interexchange carrier pursuant to Order No. 96-110, issued on February 20, 1996.

Regarding the services that Lightyear Network Solutions, LLC seeks to provide in South Carolina, the testimony reveals that the Company proposes to continue its predecessors' provision of local exchange telecommunications services via facilities-based methods and non-facilities-based methods, and facilities-based and resold interexchange telecommunications services, including operator services, for the direct transmission and reception of voice and data between locations throughout the State of South Carolina. New Lightyear intends to continue to provide a diverse array of local exchange services including basic business and residential services, custom-calling features, and toll free calling services. The testimony reveals further that the Company will at all times provide and market services in compliance with current Commission policies. In particular, the Company is familiar with Commission Order No. 93-462 regarding resale of intraLATA telecommunications services and will attempt to comply with the terms of that Order in every respect possible. On behalf of the Company, Mr. Greive agreed that at all times the Company will provide interstate services in compliance with the FCC rules and regulations.

According to Mr. Greive, since April 29, 2002, the Lightyear companies have been operating under the protection of the United States Bankruptcy Code. As part of the Bankruptcy Proceedings, New Lightyear, as the successor of the Lightyear companies, will acquire substantially all of the original Lightyear companies' assets, as well as much of the experience of its personnel in providing telecommunications services. The

testimony reveals the Company agrees to abide by and comply with the Commission's rules, regulations, and Orders.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. New Lightyear is organized as a corporation under the laws of the State of Kentucky and is registered as a foreign corporation with the South Carolina Secretary of State's Office.

2. New Lightyear is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina, after an asset transfer from its predecessor companies.

3. New Lightyear has the managerial, technical, and financial resources to provide the services as described in its Application.

4. The Commission finds that New Lightyear's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2003).

5. The Commission finds that New Lightyear will support universally available telephone service at affordable rates.

6. The Commission finds that New Lightyear will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by New Lightyear “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2003).

8. We find that the asset transfer and issuance of the authority requested by the Applicants is in the best interests of the citizens of the State of South Carolina.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that the asset transfer should be approved as filed, and a Certificate of Public Convenience and Necessity should be granted to New Lightyear to provide competitive intrastate facilities-based and non-facilities-based local exchange telecommunications services and interexchange telecommunications services in South Carolina. The terms of the Stipulation between New Lightyear and the SCTC are approved and adopted as a part of this Order, and therefore, any proposal by New Lightyear to provide local telecommunications services in rural service areas is subject to the terms of the Stipulation. In addition, New Lightyear is granted authority to provide resold intrastate interLATA interexchange service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service, operator services, or any other services authorized for resale by tariffs of carriers approved by the Commission. Once the asset transfer is completed, the Certificates granted in Order Nos. 94-659 and 96-110 shall be cancelled.

2. New Lightyear shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. New Lightyear's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for New Lightyear's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, New Lightyear's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. The Commission adopts a rate design for the long distance services of New Lightyear which are consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of New Lightyear, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However,

pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to New Lightyear also.

4. With regard to the interexchange residential service offerings of New Lightyear, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. New Lightyear shall not adjust its interexchange residential rates below the approved maximum level without notice to the Commission and to the public. New Lightyear shall file its proposed rate changes, publish its notice of such changes, and file

affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2003).

6. If it has not already done so by the date of issuance of this Order, New Lightyear shall file its revised interexchange long distance tariff within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. New Lightyear is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's offering of interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. New Lightyear shall resell the services of only those local or interexchange carriers or LECs authorized to do business in South Carolina by this

Commission. If New Lightyear changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, New Lightyear shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph four of the Stipulation and Appendix B approved by Order No. 93-462.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

New Lightyear shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the “Authorized Utility Representative Information” form which can be located at the Commission’s website at www.psc.state.sc.us/reference/forms.asp

to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. New Lightyear shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs New Lightyear to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office at the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing voice or dial-tone services within South Carolina, New Lightyear shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

14. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. New Lightyear is required to make certain reporting filings with the Commission. New Lightyear shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, New Lightyear shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp . The title of this form is "Annual Report for CLECs" and/or "Annual Report for Interexchange Companies." The Company shall file the annual report form with the Commission by April 1st of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may also be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp.

Additionally, pursuant to the Commission's regulations, the Company shall file a "CLEC Service Quality Quarterly Report" with the Commission. The proper form for this report can be found at the Commission's website at www.psc.state.sc.us/reference/forms.asp. These "CLEC Service Quality Quarterly Reports" are required to be filed within 30 days of the end of each calendar quarter.

16. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2002, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to their assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at www.psc.state.sc.us/reference/forms.asp.

17. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice-Chairman

(SEAL)